

REMARKS/ARGUMENTS

Claim Objections:

The Examiner objected to Claims 1 - 18 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner indicated that consistent language is required and provided suggested language, which is appreciated. Applicant amends Claims 1, 7, and 13 to include appropriate claim language of, "said tile cover is adapted to protectively cover the tiles." Applicant respectfully requests the Examiner to withdraw the objection to Claims 1 - 18, as amended.

Claim Rejections Under 35 USC §102(b):

The Examiner rejected Claims 1, 2, 7, 8, 13 and 14 under 35 USC §102(b) as being anticipated by Ishikawa (JP 02-161063). Applicant submits herewith an English translation of the Japanese patent and a letter of accuracy regarding the translation.

Applicant presents amended independent Claims 1, 7 and 13 to include elements which are not disclosed or taught by Ishikawa, as explained hereinbelow. Applicant respectfully submits that amended independent Claim 1, including the elements of prior Claim 2, now cancelled without prejudice, and amended independent Claims 7 and 13 are not anticipated by Ishikawa due to the lack of an express or inherent description of every element of Applicant's invention, and the lack of a showing of the elements of Applicant's invention in the arrangement required by the claims as now presented.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as

is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). [Also see MPEP § 2131.]

In support of the rejections based under 35 USC §102(b), the Examiner stated:

"Ishikawa teaches a corner guard (page 482, figure b) having a bent edge guard 8 with a base end, a ledge 9 formed integrally with the base end and extending a width outwardly from the ledge. The edge guard includes two strips with elongated lengths extending from the base end to upper ends, the tile cover has side segments 7a, 7b with a width."

"Since Ishikawa shows or discloses all of the structural limitations of the invention, the structure is capable of performing all of the functions of the corner guard."

The translation of Ishikawa discloses an outside corner structure which is intended to form outside corners for clapboard profile walls formed by drywall panels (A) having a clapboard orientation, which includes planar surfaces of drywall which are overlaid upon each lower clapboard portion (see page 479, second column, lines 14-20, and Fig. 1 of Ishikawa). The outside corner structure of Ishikawa is disposed to cover planar drywall surfaces which are not similar to the offset tile surfaces intended to be protected by Applicant's corner guard. Applicant's corner guard covers projecting ledges formed by tiles disposed against a portion of the intersection of side walls (see Applicant's Figs. 1 and 6).

Ishikawa further discloses that the outside corner structure includes upper ends of decorative pieces (7a, 7b) identified as an anchoring member (8 or 14) (see page 480, second column, lines 38-40, and last line of page 480, continuing on first column, first line of page 481). Ishikawa discloses either anchoring member (8 or 14)

extends from an interior corner junction of the L-shaped trapezoidal faces of decorative pieces (7a, 7b). Ishikawa further discloses either anchoring member (8 or 14) is attached to a corner of drywall panels by insertion of a fastener through a centrally positioned aperture (8a or 14a).

Ishikawa does not disclose that either anchoring member (8 or 14) is separated by a lengthwise gap. Each anchoring member (8 or 14) is joined together at a bent corner (see Figs. 2b, 2c, 3a and 3b), therefore the bent corner of each anchoring member (8 or 14) must be bent laterally in unison inwardly or outwardly to accommodate alignment and surface imperfections of a corner junction of drywall surfaces. When the bent corner of either anchoring member (8 or 14) is bent laterally to accommodate drywall surface imperfections, the bent corner will be deformed outwardly as the anchoring member is bent to conform to uneven drywall surfaces.

In addition, the connecting flange (9 or 15) disclosed by Ishikawa is extended adjacent of the base of either anchoring member (8 or 14). Ishikawa does not disclose a ledge formed integrally with and extending outwardly to be offset from a base end of either anchoring member, nor does Ishikawa disclose a tile cover integrally depending downwardly from the ledge, with the tile cover offset a sufficient width from a base of either anchoring member (8 or 14).

Applicant's amended Claims 1, 7 and 13 provide a corner guard **10** including an edge guard **30** having first and second attaching members **32, 34** which are separated by a longitudinally oriented gap aligned along midline **36** (see Figs. 2 - 5). Due to the inclusion of the gap, Applicant's attaching members **32, 34** are independently angled to separately attach along each respective side wall surface proximal of a wall corner **18** (see Figs. 1 and 3). Each attaching member **32, 34** is separately bent to cover and attach to opposed side wall surfaces **20, 20'** at a wall

corner **18**, regardless of deviations in the opposed wall surfaces or deviations in the angled walls forming the wall corner **18**. Applicant's amended Claims 1, 7 and 13 further include attaching member base ends **32'**, **34'** from which a ledge **24"**, **26"** extends a sufficient width outwardly from the base ends **32'**, **34'**, to position a protective tile cover **24**, **26** having exterior faced surfaces **24'**, **26'** integrally depending downwardly from the ledge **24"**, **26"** to substantially cover tiles **14**, **16** attached proximal of a corner junction of side walls (see Figs. 1, 2 and 6).

In view of the above, Applicant respectfully submits that amended Claims 1, 7 and 13 are not anticipated under 35 U.S.C. §102(b) by Ishikawa, due to the lack of each and every element set forth in Applicant's amended claim being found in a single prior art reference. In the alternative, Applicant's amended Claims 1, 7 and 13 are not made obvious under 35 U.S.C. §103(a) by Ishikawa for the reasons set forth hereinbelow. Applicant respectfully submits amended Claims 1, 7 and 13 are in condition for allowance, and requests withdrawal of the rejection of Claims 1, 7 and 13 under 35 U.S.C. §102(b). In addition, Applicant respectfully requests the Examiner to withdraw the rejection of amended Claims 8 and 14 under 35 USC §102(b), due to amended Claims 8 and 14 being dependent, either directly or indirectly, from respective base claims, amended Claims 7 and 13, which are deemed to be in condition for allowance.

Claim Rejections Under 35 USC §103(a):

The Examiner rejected Claims 3 - 6, 9 - 12, and 15 - 18 under 35 U.S.C. §103(a) as being unpatentable over Ishikawa. The Examiner stated that Ishikawa teaches a structure as stated by the Examiner regarding claim rejections under 35 U.S.C. §102(b), but Ishikawa does not specify:

- (a) the width of the side segments is between about 2 - 3 inches, and the length is between 5 - 6 inches,
- (b) that the edge guard strips include a width to cover at least one inch and a length of between about 10 - 20 inches, or
- (c) that the ledge includes a width of 1/4 - 3/4 inch.

The Examiner stated that it would have been obvious to one having ordinary skill in the art at the time the invention was made to select dimensions in the stated ranges, since discovering the optimum range is considered routine in the art. The Examiner stated that the structure could be modified according to the size of the element to be covered.

It is respectfully submitted that Ishikawa does not render obvious Applicant's independent Claims 1, 7 and 13, from which respective groups of Claims 3 - 6, 9 - 12 and 15 - 18 depend. The connecting flange (9 or 15) disclosed by Ishikawa is extended adjacent of the base of either anchoring member (8 or 14). Ishikawa does not disclose a ledge formed integrally with and extending outwardly to be offset from a base end of either anchoring member, nor does Ishikawa disclose a tile cover integrally depending downwardly from the offset ledge. The lower decorative pieces (7a, 7b or 13a, 13b) are aligned longitudinally with either anchoring member (8 or 14) (see Figs. 2b, 2c and 3b), and lack any offset width for covering an outwardly extended drywall or tile surface. Ishikawa does not teach a need for an offset width between a lower decorative piece (7a, 7b or 13a, 13b) from a base of an anchoring member (8 or 14), because the outside corner shape taught by Ishikawa is designed to cover planar drywall surfaces.

The outside corner structure of Ishikawa is disposed to cover planar drywall surfaces, and there is no disclosure, teaching or suggestion by Ishikawa that the outside corner structure could be modified to cover outwardly offset tile surfaces intended to be protected by Applicant's corner guard, such as outwardly projecting

tiles disposed against a portion of the intersection of side walls (see Applicant's Figs. 1 and 6).

Ishikawa does not disclose, suggest or teach the limitations of Applicant's independent claims. Therefore, Ishikawa does not disclose, suggest or teach the dimensions for respective dependent claims including specified widths and lengths for tile cover side segments, and/or including gap-separated attaching members of Applicant's invention.

In view of the above, Applicant respectfully submits that Claims 3 - 6, 9 - 12, and 15 - 18 are not made obvious under 35 U.S.C. §103(a) by Ishikawa for the reasons set forth herein. Further, Claims 3 - 6, 9 - 12, and 15 - 18 are in condition for allowance as being dependent, either directly or indirectly, from respective base Claims 1, 7 and 13, which are each deemed to be in condition for allowance. Applicant respectfully requests withdrawal of the rejection of Claims 3 - 6, 9 - 12, and 15 - 18 under 35 U.S.C. §103(a).


Summary:

In view of the amendments to the specification, amendments to Claims 1 and 3 - 18, cancellation of Claim 2, without prejudice, and the arguments presented herein, Applicant respectfully submits that the above-identified patent application is in condition for allowance. Issuance of a Notice of Allowance is respectfully requested.

If, for any reason, the Examiner is of the opinion that further discussion of the present application as now presented is in order, it will be appreciated if the Examiner will telephone the undersigned to expedite the prosecution of the present application. Please charge any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 16-1910.

Respectfully submitted,

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